IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY, THE SIXTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT
THE HON'BLE MR JUSTICE S.ANANDA REDDY
WRIT PETITION NO : 5470 of 1997

Between:

P.Prakasa Rao S/o.Jagga Rao
Bojjiputtuka Village Kaviti Mandal
Srikakulam Dist

..... PETITIONER

AND

1 The Industrial Tribunal Cum Labour Court,
rep. by its Chairman & Presiding Officer
Visakhapatnam
2 The Depot Manager A.P.S.R.T.C., Palasa
Srikakulam Dist
3 The Divisional Manager A.P.S.R.T.C.., Srikakulam
Srikakulam Dist
4 The Regional Manager, APSRTC., Vizianagaram Dist

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to to issue a writ, order or direction more particularly one in the nature of writ of mandamus directing the respondents 2 to 4 reinstate the petitioner as Conductor with all the attendant benefits with effect from 09/04/92 by declaring the action of the 2nd respondent in passing an order Dt.9/4/92 through his proceedings No.P1/1(52)/91 removing the services of the petitioner from service as conductor in APSRTC which was confirmed by the 3rd respondent through his proceedings No.PA/20(80)/92 Dt.30/10/92 and also by the 4th respondent through his proceedings PA/20/(170)/92, RM, Vizianagaram Dt.3/2/93 and also the action of the 1st respondent in dismissing the dispute raised by the petitioner in ID.No.140/94 by its order Dt.26/10/1995 which was notified by the Government on 30/11/95 through GO.Rt.No.2739 as highly arbitrary, improper, contrary to law, violative of fundamental rights and the principles of natural justice and pass such other order.

Counsel for the Petitioner: MR.D.RAMALINGA SWAMY
Counsel for the Respondents: MR.R.M.REDDY
The Court made the following :

THE HON'BLE MR. JUSTICE S. ANANDA REDDY

W.P.No. 5470 of 1997

ORAL ORDER:

This Writ Petition is filed by the petitioner-workman aggrieved by the order of the Labour Court, Visakhapatnam, in I.D.No. 140 of 1994, dated 26.10.1995, which was notified in G.O.Rt.No.2739, dated 30.11.1995.

2. According to the petitioner, he was appointed as conductor in the respondent Corporation on 21.2.1988 and his services were regularized with effect from 10.9.1988. It is stated that the petitioner fell sick and did not attend to duties from 26.10.1991 to 8.11.1991. The said fact of illness was intimated to the authorities through one Sri A.V.Ramana, another conductor, on 26.10.1991 itself, as he was unable to send the sick certificate. It is also stated that, subsequently, the petitioner submitted the medical certificate showing that he had suffered ill health, and, therefore, he was unable to attend to his duties. It is further stated that the petitioner was suffering from gastric trouble; legs pain; sweating; sleeplessness and urinary problems and due to the above problems he was compelled to take leave on medical grounds. However, the respondent Corporation issued a charge sheet on the ground that the petitioner was absented from duty from 26.10.1991 to 8.11.1991 unauthorisedly and also attended to duties irregularly between May 1991 to November 1991, and accordingly, appointed an enquiry officer. The Enquiry Officer, after conducting the enquiry, found that the charges are proved against the workman and subsequently an order of removal was passed by the disciplinary authority on 9.4.1992. Aggrieved by that, the workman raised the above Industrial Dispute i.e., I.D.No.140 of 1994 before the Labour Court, Visakhapatnam. The Labour Court, after considering the rival contentions and also the material placed before it, confirmed the order of

removal. Hence, the present writ petition.

3. The learned counsel for the petitioner contended that there is no justification for the respondent-Corporation for passing the impugned order of removal against the petitioner workman on the ground that he did not attend to his duties, which was on medical grounds. It is also contended that the respondent did not dispute the fact that the petitioner workman was suffering from ill health. The learned counsel also contended that if the respondent-Corporation disputes the fact of absence of the petitioner on medical grounds, the Corporation ought to have referred the petitioner to the Corporation Hospital to find out the truth or otherwise of the petitioner's claim, and without making such reference simply disregarding the claim of the petitioner by the Corporation is not proper and just. The learned counsel also contended that when the petitioner was unable to attend to duties from 26.10.1991 to 8.11.1991, the fact of illness was intimated to the Corporation Officials through another conductor, by name A.V.Ramana. But, however, the Respondent Corporation disputes the said fact of intimation. The learned counsel also contended that without specifying the period for which the petitioner did not attend to duties, a bald charge was framed against the petitioner that the petitioner did not attend to duties or attended irregularly between May to November 1991. In fact, it is contended that the Enquiry Officer as well as the Labour Court got prejudiced by referring to the subsequent absenteeism of the petitioner during the enquiry. The learned counsel also contended that the issue has to be considered only with reference to the charge and the facts relating to it only, and not with reference to the subsequent facts. Therefore, the learned counsel contended that the Corporation as well as the Labour Court got prejudiced and an order of removal was passed, which was confirmed by the Labour Court. The learned counsel also contended that when once an employee was suffering from ill health, unless a clear finding is recorded that the said claim of the employee is not a genuine, an order of

removal passed against the workman is illegal and unjust. Therefore, the learned counsel sought for setting aside the order of removal, which was confirmed by the Labour Court. Therefore, an order of reinstatement with all the benefits may be granted.

4. A counter has been filed on behalf of the Corporation disputing and denying the claims of the petitioner workman.

5. The learned Counsel for the Respondent-Corporation contended that the petitioner was not regular in discharging his duties, and therefore, the Corporation felt that it was not proper to continue the petitioner in service. Hence, the order of removal was passed, which was even confirmed by the Labour Court. Therefore, there is no merit in the present Writ Petition warranting interference with the impugned order.

6. Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent Corporation and considered the material on record.

7. It is a fact that the petitioner-workman absented to duty from 26.10.1991 to 8.11.1991, for a period of 12 days. According to him, he intimated the Management about his absence due to sickness through another conductor – Mr.A.V.Ramana. No doubt, he could not place any material, but due to the conduct of the Enquiry Officer, the petitioner was unable to examine the said A.V.Ramana, as one of his witnesses to prove his claim. The other charge is that the petitioner was irregular in attending to his duties during the period from May to November 1991. Even with reference to the said charge also, there is no specific period for which the petitioner remained absent. But, in any case, whenever the petitioner absented to duty, it was only on medical grounds, which was substantiated by producing medical certificates. Therefore, there is no justification in rejecting the claim of the petitioner-workman. A perusal of the material on record, no doubt, shows that the petitioner, who joined the services of the Corporation in the year 1988, absented to duties during the year 1991. Though the petitioner claim that he was suffering from

illness, and therefore, remained absent, the said claim was rejected by the authorities without properly verifying the fact whether he was suffering from any illness or not. The authorities did not dispute the claim of the petitioner that he produced the medical certificates showing that he was suffering from illness. In fact, a perusal of the appellate order of the Regional Manager, dated 3.2.1993 shows that the petitioner had filed certificates issued by the Government Doctors, but his contention was that those certificates were rejected without being verifying the genuineness or otherwise by referring to the Corporation Hospital for checkup. The stand of the Corporation is also not proper and just. Merely because an employee attended to his duties irregularly for certain period, it cannot be a ground to pass an order of removal against him, unless it is found to be not genuine. There is no such finding that the petitioner was not suffering from any illness, but only on the pretext that he absented to duty the impugned order was passed. When once the petitioner is suffering from illness, under the Rules of the Corporation also the petitioner-workman is entitled not only for availing leave but also for getting treatment from the Corporation Hospitals. In any case, as there was no reference by the Corporation or verification by the medical authorities so as to find out the genuineness or otherwise of the claim of the petitioner, it would not be proper to reject the claim of the petitioner by the Corporation. In fact, it is the contention of the petitioner that the Enquiry Officer as well as the Labour Court also took into account the subsequent conduct of the petitioner and passed orders by getting prejudiced by such subsequent conduct, and therefore, the petitioner sought for setting aside the order of removal. On consideration of the entire material on record, though there may be some inconvenience to the Corporation, but an order of removal passed against the workman is not proper and just.

8. The learned counsel for the petitioner-workman also contended that the Tribunal failed to consider the proportionality of the punishment

in terms of Section 11-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'). Even assuming that the petitioner had absented himself from duty for a period of 12 days, the punishment of removal imposed by the corporation is disproportionate to the alleged misconduct. Therefore, even on that ground also, the order of removal is liable to be set aside. A perusal of the order of the Tribunal shows that the Tribunal, in fact, did not specifically consider the aspect of proportionality of punishment in terms of Sec.11-A of the Act, except observing that the punishment of removal from service is appropriate. The order of removal from service on the ground of unauthorized absence, even if true, cannot be considered as appropriate and justified punishment. Even on that count also the order of removal from service is liable to be set aside.

9. Under the above circumstances, the impugned order of removal, which was confirmed by the Labour Court, is set aside. The Corporation is directed to reinstate the petitioner into service immediately without any benefit of back wages but with continuity of service. However, his past service is to be counted only for terminal benefits.

10. The Writ Petition is accordingly allowed to the extent indicated above. No costs.

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S. Ananda Reddy, J.

Dt. 16.09.2004

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To

1. The Industrial Tribunal Cum Labour Court,
   rep. by its Chairman & Presiding Officer
   Visakhapatnam
2. The Depot Manager A.P.S.R.T.C., Palasa
   Srikakulam Dist
3. The Divisional Manager A.P.S.R.T.C.., Srikakulam

Srikakulam Dist

4 The Regional Manager, APSRTC., Vizianagaram Dist

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